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C O N F I D E N T I A L SECTION 01 OF 06 OTTAWA 000174

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TAGS: PREL PHUM MARR CA

SUBJECT: S/WCI CONSULTS WITH CANADA, MUCH MORE CONVERGENCE
THAN DIVERGENCE

Classified By: PolMinCouns Brian Flora. Reasons: 1.4 (b) and (d).

¶1. (C) Summary. S/WCI Ambassador and Canadian foreign affairs and justice officials in Ottawa agreed to cooperate on the development of justice rapid response capacity. The Canadians were also keen to strategize on Darfur. They were unwilling to accept third-country Guantanamo detainees in Canada, but expressed vague assurances that Canada would encourage other countries to resettle them. The Canadians agreed with U.S. assessments of ongoing international and hybrid war crimes tribunals, and saw merit in a "friends of the tribunal" joint-demarche to press the ICTY to develop a credible completion strategy. They were also interested in finding a way to get Kenya to convey Rwandan suspect Felicien Kabuga to the ICTR. The increased willingness among many Canadian officials to improve bilateral cooperation reflects the Harper Government's emphasis on identifying and exploiting areas where the U.S. and Canada can promote our shared interests. End summary

¶2. (U) S/WCI Ambassador-at-Large Clint Williamson traveled to Ottawa January 17-19 to discuss war crimes issues with

officials from the Department of Foreign Affairs and International Trade (DFAIT), and the Department Justice and its component law enforcement, border control, and security agencies. There was a remarkable convergence of views at the meetings, particularly on the need for the U.S. and Canada to develop complementary justice rapid response capacity, and on the way forward on the international and hybrid tribunals for Yugoslavia, Rwanda, Sierra Leone, and Cambodia. S/WCI Special Assistant Matthew Lavine staffed and participated in the visit.

-- START --

¶3. (U) At his first meeting, Williamson briefed DFAIT Stabilization and Reconstruction Task Force (START) Director General (DAS-equivalent) Don Sinclair on work S/WCI was doing OGeneral (DAS-equivalent) Don Sinclair on work S/WCI was doing in the justice sector to complement the work of S/CRS, START's counterpart at State. Ambassador Williamson focused on USG thinking about preventative response, justice rapid response, and accountability in the case of actual or impending genocide and other war crimes.

START Engagement

¶4. (U) Sinclair and his senior staff responded to the brief with enthusiasm. Sinclair noted that the initiative tracked with the "responsibility to protect," a critical element of Canadian foreign policy. Like the U.S., Sinclair said, finding adequate resources for START had been a challenge,

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but he noted the situation was improving as the GOC saw the value of the START model in action in Afghanistan.

¶5. (U) START Director Shawn Barber said that Canada was particularly interested in joining with the U.S. in its effort to assess and predict genocide. He addressed each element of the Ambassador's presentation both at the meeting and in follow up contact:

-- Preventative Response (PR): Canada faces a knowledge and institutional capacity gap in this area that should be addressed. START would like to send officers to State, CIA, and other relevant departments in February to discuss future CANUS collaboration on preventative response.

-- Justice Rapid Response (JRR): START will organize a JRR group meeting in New York or Ottawa in the third week of March (TBC). The meeting will include follow-up to the Venice meeting and a discussion of the O'Neil study. State and Justice should participate.

-- Accountability: The GOC is discussing a possible Canadian initiative to assist a select number of fragile states develop indigenous but ICC-compatible war crimes and genocide legislation. Canada would operate a concurrent initiative to enhance indigenous investigative and prosecutorial capacity in the same states.

START Where?

¶6. (SBU) Barber suggested that a Justice Rapid Response capacity should lie in the UN, perhaps in the Office of the High Commissioner for Human Rights (OHCHR). Williamson responded that flexibility was key, allowing for various alternatives for response - through the UN, through regional organizations (e.g. African Union), or through groupings of like-minded countries - as opposed to "putting all our eggs in one basket" (i.e., the UN, where action can be thwarted by one party).

¶7. (U) DG Sinclair responded that Canada "would be OK with that," but suggested that a UN tie-in would be useful for

setting international JRR standards, and for organizing interventions when it was possible to gain consensus on a deployment at the UN. We envision it being like peacekeeping, he said, sometimes we do it under a UN mandate, sometimes we don't.

-- Africa --

¶8. (SBU) The only discordant note of the visit was stuck by

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DFAIT Africa DG Ian Ferguson who began his meeting with criticism of the U.S. for undermining the International Criminal Court (ICC) with Article 98 agreements. He then turned to the agenda, which included the International Criminal Tribunal for Rwanda (ICTR), Rwanda fugitives, Sierra Leone and crisis prevention and response in Africa. Williamson briefed Ferguson and his team on U.S. thinking on the agenda items, as well as U.S. concerns about Sudanese leader Bashir's candidacy for the leadership of the African Union.

Sudan, Bashir & the AU

¶9. (C) Ferguson responded that Bashir as the next head of the African Union would be "disastrous" and that Canada had pressed some 20 African capitals to block his selection. In a follow up call, DFAIT Sudan Task Force staff told Embassy Ottawa that sub-Saharan governments were against Bashir, while the Maghrebins, led by Egypt, were backing his candidacy.

¶10. (C) The Canadians also doubted the Government of Sudan would actually prosecute war criminals, as they had promised.

Ferguson characterized the GOS' undertaking to do so as "smoke and mirrors" designed to avoid ICC prosecutions, noting that Bashir is not sufficiently independent from the security forces to pull it off even if he desired to.

Uganda

¶11. (C) Ferguson turned to Uganda and argued that the Lord's Resistance Army (LRA) leadership held the unrealistic expectation that they could obtain a power-sharing agreement through negotiations. Judging that the LRA was unwilling to return to life in the bush, Ferguson said Canada and the U.S. should manage the LRA's expectations and "wear it down" to ensure that the current negotiations would succeed. After emphasizing (again) Canada's support for the ICC, Ferguson said Canada would support a credible indigenous justice mechanism in Uganda.

Rwanda and Kenya

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¶12. (C) Responding to Williamson's assertion that it was "crunch time" for the ICTR, Ferguson agreed that the court would have to focus on less than a dozen high-priority cases, to include accused genocidaire Felicien Kabuga who appeared to be waiting out the tribunal in Kenya by bribing corrupt GOK officials.

¶13. (C) Ferguson said he liked, and would seek legal advice about, the idea of a joint U.S.-UK-Canada demarche some time in the spring to press Kenya to turn over Kabuga. He added

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that Canada would consider pressing the Tanzanians to make a similar approach to the Kenyans. At a separate meeting, the head of DFAIT's legal bureau wondered "how much pain the Kenyans would need to feel" to give up Kabuga, if there might

be a role in the matter for the Commonwealth, and whether it would be possible to play on RSA leader Thabo Mbeki's vanity to get him to intervene with the Kenyans.

-- Legal --

¶14. (SBU) At a lunch hosted by DFAIT Legal Affairs Assistant Deputy Minister (U/S-A/S equivalent) Alan Kessel, and attended by Ambassador Wilkins, Ambassador Williamson discussed general areas of bilateral interest, focusing on international tribunals and war crimes policy generally.

¶15. (SBU) At the subsequent meeting with Kessel and his staff, Williamson discussed more specific areas of bilateral interest, including international war crimes tribunals, detainee repatriation, and genocide prevention and anticipation. Kessel and his staff were keen to collaborate with S/WCI in most areas, and promised extensive follow up and exchange.

Tribunals Completion Strategy

¶16. (SBU) Kessel saw merit in Williamson's idea of forming a U.S.-UK-Denmark-Netherlands-Canada "friends of the tribunal" demarche to emphasize the need for tribunal legal and administrative staff to make a good faith effort to complete the work of the International Criminal Tribunal for Yugoslavia (ICTY). He agreed that the court was moving too slowly, having adopted inefficient methods that made it hard to defend the tribunal before legislators and in the court of public opinion.

¶17. (C) Kessel accepted Ambassador Williamson's point that it would be necessary to pressure the ICTY (and other tribunals) in ways that did not signal to fugitives that they could somehow wait out the court's existence. Regarding Serbia, he noted that DFAIT was also struggling with how to balance the desire to draw the Serbs into normal relationships with Europe and North America against the need to leverage the delivery of "really bad guys" like Ratko Mladic and Radovan Karadzic to the ICTY.

Tolbert

¶18. (C) Kessel seemed surprised when Williamson indicated that ICTY Prosecutor Carla del Ponte would definitely not serve for another term and agreed that current Deputy

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Prosecutor David Tolbert would be an excellent choice as her successor. He suggested the U.S. seek to overcome Russian resistance by "sell(ing) Tolbert as an interim caretaker" there to execute the tribunal's completion strategy. (Note: Del Ponte's term expires this year and her successor must be confirmed by the UNSC. End note.)

Rwanda Courts and Jails

¶19. (SBU) Turning to the ICTR, Kessel said Canada was comfortable overall with how the tribunal was progressing, particularly when he compared it to others. Canada had five individuals it wanted to deport to Rwanda, he said, but was unable to do so due to the lack of safeguards on the treatment of inmates in Rwandan prisons. Williamson also stressed the connection between Rwandan judicial capacity and the ICTR completion strategy, noting that both Canada and the United States stood to save funds by bringing Rwandan courts up to international standards, at which point some cases could be transferred there from the ICTR.

Cambodia Tribunal Flap

¶20. (C) The hybrid tribunal in Cambodia seemed to be heading

downhill fast, Legal Officer Johanne LeVasseur opined, citing such instances as the Cambodian demand that no foreign attorneys participate. This was contrary to the agreement authorizing the court, and led to a breakdown of the court along Cambodian vs. International judges when it came to agreeing to rules. Kessel agreed, noting that it seemed like Cambodian politics was getting in the way of success, to the satisfaction of Hun Sen, the Chinese, and others who do not want it to succeed. "Did we acquiesce too much to Cambodian demands...and create a farce," he asked.

Uighur "Baby Seals" - GTMO Detainees a No-Go

¶21. (C) Characterizing the Uighurs as "the baby seals of international terrorism," DFAIT Legal Adviser Sabine Nolke Qinternational terrorism," DFAIT Legal Adviser Sabine Nolke emphasized Canada's unwillingness to accept third country Guantanamo detainees. In an aside, one of Nolke's colleagues pointed out that a detainee released in Canada would be in a position to re-enter the U.S. via one of the many poorly patrolled Indian reservations that straddle the U.S.-Canada border. Kessel offered vague assurances, when pressed by Williamson, of Canada's willingness, however, to engage third countries regarding re-settlement of the Uighurs and other detainees from "hard countries" (e.g. Sudan, Uzbekistan, etc.)

-- Justice --

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¶22. (SBU) Department of Justice Director and General Counsel for Crimes Against Humanity and War Crimes Terry Beitner hosted Ambassador Williamson at a roundtable of officials from the Department of Justice, the Canadian Border Services Agency (CBSA), Customs and Immigration Canada, and the Royal Canadian Mounted Police (RCMP). Beitner said that the Justice program was primarily "inward looking" but it also supported international actors. Indeed, he noted, his office was currently prosecuting an alleged Rwandan genocidaire who had managed to immigrate to Canada, and was conducting part of the trial in Rwanda at great expense.

¶23. (SBU) After Ambassador Williamson briefed the participants on S/WCI interests and activities, Beitner expressed appreciation for the presentation and remarked that he had been impressed by the Global Futures Forum (GFF). He asked S/WCI to serve as his office's conduit to GFF reports and analysis.

¶24. (SBU) Beitner noted that he and his inter-agency colleagues developed and prosecuted parallel criminal and immigration cases, and that there were currently some 60 suspected war criminal cases in-train in Canada. If individuals were unsuccessfully prosecuted, or if they did not merit criminal prosecution in Canada (vice their home country), the GOC would seek removal. Roughly 70 percent of current cases emanated from the former Yugoslavia and Rwanda, while most of the rest came from Africa and South America.

¶25. (SBU) Since 1998 Canada had denied entry to over 3,000, and removed over 400, known war criminals. For every 10 CBSA war crimes immigration cases, one goes to the RCMP for criminal investigation, with the RCMP conducting seven to ten war crimes investigations per year. Of those, Justice has the resources to try one large case each year. According to Beitner, Justice was building several strong cases.

¶26. (C) Comment: Canadian DFAIT and Justice officials are keen to increase and deepen cooperation with their U.S. counterparts. Indeed, Kessel and Barber followed up on their pledges of greater engagement with specific proposals E-mailed to Ambassador Williamson before his plane had departed from Canada. This refreshing trend has become more

apparent as the Harper Government, after one year in office, continues to press the Canadian foreign affairs, defense, and security bureaucracies to improve U.S-Canadian bilateral cooperation and promote our shared interests in the world.

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WILKINS